BEN SWARTZENTRUBER, JR.

IBLA 85-577 Decided November 26, 1986

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. OR-22519 M.

Affirmed.

1. Evidence: Presumptions -- Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

BLM properly denies a petition for reinstatement of a noncompetitive oil and gas lease terminated by operation of law for failure to pay annual rental timely, filed pursuant to 30 U.S.C. § 188(c) (1982), where the lessee fails to overcome the presumption that BLM never received the rental due either before the lease anniversary date or within 20 days thereafter.

APPEARANCES: Ben Swartzentruber, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ben Swartzentruber, Jr., has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated April 9, 1985, denying his petition for reinstatement of noncompetitive oil and gas lease OR-22519 M.

Effective February 1, 1982, BLM issued a noncompetitive oil and gas lease (OR-22519) to Paul R. Colacecchi for 2,560 acres of land situated in Crook County, Oregon, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). Effective December 1, 1983, BLM approved an assignment of a 100 percent record title interest in 80 acres of land from Colacecchi to appellant. The new lease was assigned serial number OR-22519 M.

By notice dated March 20, 1985, BLM informed appellant that his oil and gas lease had terminated on February 1, 1985, "for failure to pay rental in a timely manner." BLM also advised appellant on the procedures for seeking a reinstatement of his lease pursuant to either 30 U.S.C. § 188(c) (1982) (class I reinstatement) or Title IV of the Federal Oil and Gas Royalty Management Act of 1982, P.L. No. 97-451, 96 Stat. 2462, codified at 30 U.S.C. § 188(d) and (e) (1982) (class II reinstatement).

On April 2, 1985, appellant notified BLM that he had sent a check, dated January 30, 1985, in payment of the annual rental and that the check had not cleared his bank. 1/ Appellant stated that he had stopped payment on that check and "am sending you another check * * * to reinstate our lease # 22519 M." The record indicates that BLM received the latter check in the amount of the rental due, plus a $25 filing fee, on April 2, 1985.

In its April 1985 decision, BLM treated appellant's letter as a petition for a class I reinstatement and denied the petition because appellant did not pay the annual rental "within 20 days of the anniversary date for the lease," i.e., February 1, 1985, as required by 30 U.S.C. § 188(c) (1982). BLM stated that appellant had until May 27, 1985, to file a petition for a class II reinstatement and that filing an appeal from denial of his class I reinstatement petition would not extend that deadline.& &The record does not show that appellant petitioned for class II reinstatement. In his statement of reasons for appeal, appellant asserts again that he mailed a check, dated January 30, 1985, in payment of the annual rental and submits a "check ledger showing our check was written and mailed" on that date. The copy of a page from appellant's "check ledger" indicates that a check was written on January 30, presumably 1985, to "Dept. of Interior-Mineral," in the amount of the annual rental.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease, on which there is no well capable of producing oil or gas in paying quantities, will automatically terminate by operation of law where the lessee fails to pay the annual rental on or before the lease anniversary date. See also 43 CFR 3108.2-1(a). A lessee may seek reinstatement of a terminated lease under 30 U.S.C. § 188(c) (1982) (class I reinstatement), but only where the rental due has been "paid on or tendered" within 20 days after the lease anniversary date. See also 43 CFR 3108.2-2(a). In the present case, appellant was required to pay or tender the rental due on or before February 21, 1985.

Appellant asserts that he mailed the rental due on January 30, 1985, 2 days before the lease anniversary date. In the normal course of the mails, the check should have been received by BLM on February 1, 1985, or shortly thereafter. The record indicates that BLM has no record of receiving a check in payment of the annual rental until April 2, 1985.

In circumstances where an appellant was required to file a document and BLM has no record of receiving it, the presumption that public officials

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1/ There is a handwritten note dated Apr. 4, 1985, on appellant's letter, which states:

"[Accounts] contacted BRASS [Bonus and Rental Accounting Support System] this date to ask if his check is possibly being held in suspense. They have no evidence of ever receiving his check and also stated they do not hold checks. (Required by 1372 to make immediate deposit of all checks)."

have properly discharged their official duties will, in the absence of sufficient contrary evidence, support a conclusive finding that BLM never received the document and then lost it through mishandling. Yates Petroleum Corp., 91 IBLA 252 (1986); Thorvald W. Hansen, 90 IBLA 159 (1985). The presumption is not overcome by an uncorroborated statement that the document was mailed. Thorvald W. Hansen, supra; James Boatman, 87 IBLA 31 (1985). In the present case, appellant asserts that his rental check was "mailed" and submits a copy of a page of a "check ledger" in support thereof. The ledger only establishes that the check was written, not that it was mailed to or received by BLM. Accordingly, we must conclude that appellant has not rebutted the presumption that BLM never received the check and then lost it through mishandling. Norman A. Whittaker, 89 IBLA 224 (1985). 2/

We conclude, therefore, that appellant's oil and gas lease terminated automatically by operation of law on February 1, 1985, when the annual rental was not paid on or before that date and that appellant is not entitled to a class I reinstatement where the annual rental was not "paid on or tendered" within 20 days after that lease anniversary date. Oscar D. Graham, 91 IBLA 394 (1986); Herbert J. Stinnett, 91 IBLA 239 (1986); Albert D. Fleck, 91 IBLA 187 (1986).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

2/ Appellant also states on appeal that the Postal Service "lost" his rental check. However, as we have long held, a person, having chosen the Postal Service as the means of delivery of a required document, must bear the consequences of loss or untimely delivery of the document. Paul E. Hammond, 87 IBLA 139 (1985), and cases cited therein.